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Terms of sale and supply of HETEK Lift- und Hebetechnik GmbH

I. Scope

1. Our terms of sale and supply (hereinafter referred to as GTB – General Terms of Business) apply exclusively. Terms of the customer, which deviate from our GTBs, are not valid.
2. If the customer is a contractor, then these terms of business apply for the entire duration of current and future business relations with the customer, even if no specific reference is made to these terms in a subsequent transaction.

II. Scope of the contract

1. Our written confirmation of order is decisive with respect to the scope of delivery; if we have made an offer, this will also apply but where our offer is only valid for a limited term, it shall only apply if it has been accepted within the prescribed period; if the period is exceeded, then we are no longer bound by the offer.
2. The documents relating to the offer, such as illustrations, drawings, weights and measures, are only approximate unless they are specifically described as being binding. We reserve right of ownership and copyright of estimates, drawings and other documents; they must not be disclosed to third parties. We undertake only to disclose to third parties, plans as described by the customer as confidential, with the latter's consent.
3. Subsidiary agreements and changes must be in writing.

III. Price and payment

1. Unless otherwise agreed, prices are ex-works (EXW Incoterms 2000), including loading at the works but excluding packing. Value added tax at the statutory rate is added to the prices. At the written request of the customer and at his expense, we will insure the consignment against theft, breakage, transport, fire and water damage and other insurable risks.
2. Unless agreed otherwise, payment shall be made net cash, free domicile within 30 days of the date of invoice. In the event of a delay in payment, we may charge default interest at the normal bank rate, unless we provide evidence of a greater loss of interest or the customer provides evidence of a lower loss of interest. In all cases, our right to demand default interest at the statutory interest rate is unaffected.
3. The minimum order value is € 100,- net, plus VAT. For orders of less than this value, we charge a markup for small-volume purchases amounting to € 40,-.
4. The offsetting of any counter-claims of the customer, which we dispute, apart from legally justified claims, is not permitted.
5. Our prices are based on the cost factors applicable at the time the contract is concluded. If, up to the time of delivery – but not within four months of conclusion of the contract – drastic increases in materials, wages and or costs occur, we reserve the right to make a corresponding price adjustment.
6. If, in an individual case, we accept bills of exchange or cheques, following express agreement, this will purely be by virtue of payment. We do not assume any guarantee with respect to presentation on time. In the case of payment by bill of exchange, the date payment is received is the day the bill of exchange is honoured. Any discount and ancillary charges will be charged to the customer.

IV. Lead-time

1. The delivery deadline starts when the order confirmation is received by the customer, but not before the customer has discharged the contractual duties, in particular, the necessary provision by him of documents, approvals, authorisations and receipt of an agreed downpayment, as applicable.
2. The delivery deadline has been met if the item being delivered has left the works or readiness for dispatch has been notified by the time the deadline expires.
3. The delivery deadline will be reasonably extended in the event of force majeure, particularly in the case of measures taken as part of industrial action, in the case of strike or lock-out and in cases of other unforeseen obstacles, which are beyond our control, in so far as such obstacles can be demonstrated to have a considerable influence on the completion or delivery of the item in question. This also applies if these circumstances occur at our sub-contractors. We are also not responsible for the circumstances described above, if they occur during an already existing delay. We will notify the customer immediately of the start and end of such obstacles.
4. If the customer incurs a loss on account of a delay, which has occurred as a result of our own fault, then he is entitled to demand default compensation. For each full week of the delay this amounts to 1/2 % but overall to no more than 5 % of the value of that part of the total delivery, which cannot be used on time or in accordance with the contract, as a result of the delay, unless the customer can provide evidence of greater damage caused by default or we can provide evidence of lesser damage by default. If dispatch is delayed for reasons attributable to the customer, and in particular by virtue of an instruction from the customer, then the latter will be charged, one month following notification of readiness for dispatch, with the costs incurred for storage or, where storage is provided at the supplier's works, at least 1/2 % of the invoice total for each month. However, we are entitled, having allowed a reasonable period, which has not been respected, to dispose of the delivery item elsewhere and to supply the customer within a reasonably extended deadline.

V. Transfer of risk and receipt of delivery

1. The risk is transferred to the customer at the latest on dispatch of the delivery parts, even when part deliveries are made or we have taken responsibility for other work/services, such as shipping costs, transport and assembly.
2. If dispatch is delayed for reasons attributable to the client, the risk will be transferred to the latter on the date the goods are ready for dispatch. However, we are obliged to take out any insurances requested by the customer, at the latter's cost.
3. The customer shall receive delivered items, even if they include major defects, irrespective of the rights under section VII.
4. Part deliveries are permitted unless the part delivery is of no objective value to the customer.

VI. Retention of ownership

1. We reserve ownership of the delivered item until such time as all our claims (including bills receivable) that are due by the customer by virtue of the commercial relationship have been settled. This also includes future claims, also arising from contracts made simultaneously or subsequently. This provision also applies if some or all of our claims have been included in a current invoice and the balance has been established and acknowledged. If the customer contravenes the contract, particularly in the event of delay in payment, we are entitled to take back the delivered item. If we take back or pledge the item, unless the provisions of a consumer loan agreement apply, termination of the contract will only take place if we expressly specify this in writing. The customer must notify us immediately in writing of any pledges or other interventions of third parties.
2. The customer is authorised to sell on the delivered item in the normal course of business. However, at this point he will assign all the claims which may accrue against the purchaser or third parties as a result of selling on the item, irrespective of whether the goods subject to retention are sold on with or without processing. The customer is still authorised to collect these debts, even after they have been assigned. This does not affect our authorisation to collect the debts ourselves, but we undertake not to collect the debts if the customer honours his payment obligations. We can demand that the customer notifies us of the assigned claims and their debtors; that he provides all the information necessary for collection; that he hands over the relevant documents and notifies the debtors of the assignment. If the delivered item is sold on together with other goods, which do not belong to us, then the claim of the customer against the buyer is considered to be assigned to the extent of the delivered price agreed between us and the customer.
3. The processing or transformation of retained items is always executed by the customer on our behalf. If the retained item is processed with other items not belonging to us, then we shall acquire joint ownership of the new item in the ratio of the value of the retention item to the other processed items, at the time of processing. In addition, with regard to the item created by processing, the same applies as to the retained item.
4. We undertake to release the securities due to us to the extent that their value exceeds the claims being secured by more than 25 %, provided they have not yet been settled.

VII. Liability defects

1. We are liable for defects in the goods supplied, as follows: Our warranty only covers the defects, which are present at the time of transfer of risk. No warranty is accepted in respect of damage, which is caused by the following: unsuitable or improper use, defective assembly and/or commissioning by the customer or third parties, natural wear and tear, incorrect or negligent handling (including modifications and maintenance), unsuitable operating materials, replacement materials, defective construction work, unsuitable foundations, chemical, electro-chemical or electrical influences, provided they are not attributable to any fault on our part. If and in so far as complaints

of the customer prove to be unjustified, in particular, if damage is present, for which we are not liable according to the above clause, the customer will bear all costs, which we incur as a result.

2. If the customer is a contractor, then he must notify us in writing of defects in accordance with the following regulations, without which our performance will be considered approved:

a. obvious defects shall be notified to us immediately on delivery or, where erection or assembly by us or a trial run is agreed, on completion of the erection, assembly or trial run, but within a maximum of 6 months (in the case of multi-shift operation, within 3 months)

b. hidden defects shall be notified to us immediately they are discovered.

3. If a defect occurs, for which we are responsible, then we are obliged, in so far as the law on contracts for work and services applies, and at the option of the customer, in so far as the regulations of the law of sales applies, to rectify the defect or to provide a replacement at our option (hereinafter referred to as subsequent performance). We are entitled to refuse the method of subsequent performance chosen by the customer, if this is only possible at excessive cost. Where the defect has to be rectified, we are obliged to bear all the necessary expenditure required to rectify the defect, in particular transport, travelling expenses, labour and material costs. This does not apply if such costs are increased as a result of the delivered item having been moved to a place other than the place of performance; these costs must be borne by the customer. This restriction does not apply if the provisions relating to the purchase of consumer goods apply.

4. If rectification of the defect is unsuccessful, or if we are not willing or in a position to rectify the defect or make a replacement delivery, or if this process is delayed beyond a reasonable period, then the customer is entitled to terminate the contract or to reduce the remuneration accordingly. If the provisions of the law on contracts for work and services apply, the customer is also entitled, in urgent cases, in particular where the safety of his plant is put at risk, or if he is threatened with disproportionately large losses for other reasons, to rectify the defect himself or have it rectified by third parties (hereinafter referred to as self-help) and demand from us repayment of the expenses incurred. This does not affect the obligations of the customer to notify us immediately of his intention to execute the work himself.

5. Claims for compensation for defects are excluded, unless

a. we have guaranteed the quality of the item or if essential contractual duties have been breached,

b. the damage is attributable at least to the gross negligence of one of our employees or vicarious agents or

c. the damage is, at least, attributable to negligent injury to life, body or health. In the case of the above letter a) and – in so far as the damage is attributable to the behaviour of a vicarious agent – letter b), our liability is limited to the level of damage that can typically be foreseen. Any existing liability under the product liability law, is unaffected in any case.

6. If the provisions of the consumer goods purchase act apply, the period of prescription in respect for claims for defects by the customer, amounts to two years, or otherwise one year from the statutory commencement of legal prescription.

VIII. Liability arising from warranty of title, in particular patents

1. Our liability in respect of defects of title of the item supplied, in particular as a result of the infringement of copyright, trademarks, patents or other protective rights, is excluded if the item supplied is based on a design, especially a design provided by the customer. In addition, point VII, para. 5 applies accordingly in respect of the exclusion or limitation of our liability. If liability exists under this point, then it is our obligation to indemnify the customer against claims of third parties for infringement of copyright, trademarks, patents or other protective rights. A further condition of this right to exemption is that

a. the customer allows us – within a legal framework – to exert the greatest possible influence on the dispute with the supposed holder of the alleged right of protection, especially in the case of litigation with the latter (including our right to settle in court) and supports us in this dispute, where this is reasonable, in particular by immediately communicating the information required as part of this dispute and not accessible to us, against reimbursement by us of his essential expenses,

b. the alleged legal infringement is based exclusively on the non-observance of our contractual duties, particularly, on the design of the delivered item and not on any use of the delivered item which cannot be attributed to us, in particular on its combination or use in conjunction with other products.

2. We have the right to exempt ourselves from the obligations undertaken in para. 1 either by:

a. obtaining the necessary licences in respect of the allegedly infringed protective rights or

b. by providing the customer with a modified delivered item or parts thereof, which, in the event of replacement of the infringing delivered item or part thereof, will remove the accusation of infringement with respect to the delivered item.

IX. Limitation of liability with respect to other breaches of duty

In so far as claims for compensation for impossibility of performance, breach of contract, culpa in contrahendo and tort are concerned, the provisions concerning the exclusion or limits of our liability apply in accordance with point VII, para. 5 above, as applicable.

X. Non-applicability / adjustment of the obligations to perform

Irrespective of the exclusion or limits of our liability under points IV, para. 4, VII, para. 5, VIII, para. 1, clause 2 and IX above, we have the right to withhold performance, where the legal conditions are present, under § 275, para. 2 of the Civil Code [BGB] on account of so-called physical impossibility or the right to demand adaptation of the contract or to terminate same on account of upsetting the economy of the contract under § 313 of the Civil Code [BGB], in particular in the case of circumstances, which are not merely temporary, under point IV para. 3 above.

XI. Choice of law and legal venue

All legal relations between us and the customer are governed by the law of the Federal Republic of Germany, to the exclusion of the Vienna Sales Convention dated 11.04.1980. The local and international legal venue for any disputes arising out of the contractual relationship, including bill of exchange and cheque proceedings, is our principal place of business or the registered office of our subsidiary, responsible for delivery. We are also empowered to sue at the principal place of business of the customer.